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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

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MAR 10 1998  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In the Matter of )  
 )  
Amendment of Section 73.202(b) ) MM Docket No. 97-203  
Table of Allotments ) RM-9132  
FM Broadcast Station )  
(Wallace, Idaho and )  
Lolo, Montana) )

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**COMMENTS**

Sunbrook Communications Inc. ("Sunbrook"), licensee of KGGL(FM), KGRZ(AM), KZOQ(FM) and KYLT(AM), Missoula, Montana, hereby opposes the Petition for Rulemaking filed by Hawkeye Radio Properties ("Hawkeye"), permittee of authorized but unbuilt FM station KQWK(FM), Channel 248C2, at Wallace, Idaho. Hawkeye requests that the Commission change KQWK's channel to Channel 248C3 and reallocate the channel and station from Wallace, Idaho, to Lolo, Montana -- a distance of 94 miles. For the reasons set forth below, Hawkeye's reallocation request must be denied.

**BACKGROUND**

1. On March 3, 1997 (Public Notice dated March 6, 1997), the Commission authorized Alpine Broadcasting, Ltd. to construct a new FM station on Channel 264C at Wallace. That construction permit remains outstanding and unbuilt. Channel 264C was allotted to

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Wallace, Idaho in 1987 by the Commission's Revised FM Table of Allotments Implementing BC Docket No. 80-90, 52 Fed. Reg. 39,774 (October 23, 1987) ("Allotment Revisions").

2. Channel 248C was also allocated to Wallace, Idaho in 1987 in the Allotment Revisions, but was downgraded to a Class C2 station by the Commission's Memorandum Opinion and Order, 6 FCC Rcd 6476 (1991). On August 9, 1996, Hawkeye filed a petition seeking approval for a construction permit authorizing Hawkeye to construct and operate an FM broadcast station on Channel 248C2 in Wallace, Idaho. The Commission subsequently approved the application on March 7, 1997 (Public Notice dated March 12, 1997).

3. On May 23, 1997, Hawkeye, the party who expressed an interest in constructing and operating a station in Wallace, filed a Petition for Rulemaking seeking to downgrade the Channel 248C2 allocation to a Class C3, and to reallocate the channel from Wallace to Lolo. It requested this change without even beginning construction in Wallace.

4. Under Section 1.420 of the Commission's Rules, the permittee of a station may file a petition with the Commission to change its community of license, without affording other interested parties an opportunity to file competing expressions of interest. The proponent of such a change must show, however, that the modification will result in a net service benefit for the communities involved under current FM allotment priorities. Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, 4874 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Modification Report and Order"). This Hawkeye has not done, and cannot do.

5. On September 19, 1997, the Commission issued a Notice of Proposed Rulemaking setting forth Hawkeye's reallocation request. While the Commission noted that Lolo may have some of the indicia of a community, it also characterized Hawkeye's proposal as

an attempt to reallocate its authorized facility "from a rural community to a suburban community, from which its intended operation would place a city grade (70 dBu) signal over 50 percent or more of the urbanized area." Wallace, Idaho and Lolo, Montana, MM Docket No. 97-203, RM-9132 (released September 19, 1997). The Commission required Hawkeye to submit additional information responsive to the factors set forth in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) ("Tuck"), to show Lolo is sufficiently independent of Missoula to justify a first local transmission service preference. Hawkeye failed to provide this information in its response. Instead, it repeated the same facts and arguments it set forth in its original petition.

6. Sunbrook will demonstrate herein that the proposed reallocation fails, not only under the FM allotment priorities, but also under each of the Tuck criteria. Even more importantly, a significant portion of the area which KQWK is authorized to serve in Wallace receives no FM service. Moving KQWK away from Wallace would deprive a number of listeners the loss of the opportunity for a first FM service. In contrast, the reallocation to Lolo would simply add another FM reception service to a market which is already well-served by AM and FM broadcast stations. Because Lolo is an integral part of the Missoula metropolitan area, the relocation of KQWK does not offer significant public interest benefits to offset the major detriments from the proposed reallocation.

### **ARGUMENT**

#### **Hawkeye Fails to Meet the FCC Reallocation Prerequisites and FM Allotment Priorities**

Sunbrook opposes the reallocation of Channel 248C2 from Wallace to Lolo because: (1) the move will deprive significant areas and populations of the opportunity for their first FM and second aural reception service; and (2) the modification would result in a net service loss, and therefore the plan would not result in a preferential arrangement of allotments.

1. **Moving the Station from Wallace Would Deprive People of Their Opportunity for a First FM Service and Second Aural Reception Service**

Wallace is located in a mountainous region near the Idaho-Montana border. The community is bordered by Interstate 90, one of the major highways in the western United States. While station KWAL(AM) is licensed to Wallace, this service is difficult to receive in areas directly east of Wallace because of the effect of the terrain on KWAL's signal.

As shown in the Engineering exhibit attached hereto as Exhibit 1, there are currently large areas near Wallace which receive no FM broadcast service -- FM "white areas" -- and only one AM service -- aural "gray areas." The operation of KQWK in Wallace would have filled in this large FM white area and aural gray area, measuring over 573 square kilometers. Relocating KQWK to Lolo will deprive people of Wallace and the surrounding areas from the potential of receiving their first FM service. Moving an authorized station from a community that upon construction would potentially fill in gray areas, to a community that is already well-served by broadcast radio stations, like Lolo, is contrary the public interest. See, e.g., Littlefield, Wolforth and Tahoka, Texas, MM Docket No. 95-83, RM-8634 (released March 21, 1997).

2. **The Relocation of the Station to Lolo, Montana Does Not Constitute a Preferential Arrangement of Allotments Under Established Commission Priorities**

Under the Commission's FM allotment criteria, priority for service is set forth in the following order: (1) first full-time aural reception service; (2) second full-time aural reception service; (3) first local transmission service; and (4) other public interest factors. See Modification Report and Order, 4 FCC Rcd at 4873; Revision of FM Assignment Policies and Procedures, 90 FCC2d 88 (1992).

a. **First Allotment Priority: First Full-Time Aural Reception Service**

KQWK would not provide a first aural reception service in either Wallace or Lolo. This first priority is therefore not impacted by the proposed move.

b. **Second Allotment Priority: Relocating the Station to Lolo would Deprive Significant Areas of the Potential of Receiving a Second Local Aural Service**

As noted, the mountainous terrain around Wallace weakens the signal of KWAL(AM), the only other station serving Wallace, Idaho. As a result, there are areas which receive only a weak KWAL(AM) signal, and no FM service. Upon construction, KQWK would have filled in these areas, thereby fulfilling the Commission's second allotment priority as a second fulltime local aural service.

The relocation to Lolo would provide no first or second aural service to any listeners or geographic area. Lolo is well-served by at least 12 other full-time AM and FM broadcast stations. As a result, keeping KQWK allotted to Wallace, which is what Hawkeye originally requested when it petitioned the Commission, would fulfill the Commission's second allotment. The reallocation of KQWK to Lolo would not.

c. **Third Allotment Priority: Lolo, Montana is not Deserving of a First Local Transmission Service Because of its Interdependence on the Missoula, Montana Urbanized Area**

Hawkeye's relocation would result in KQWK providing a 70 dBu signal over the entire Missoula, Montana Urbanized Area. Wallace, Idaho, DA 97-1975 (released September 19, 1997). The Census Bureau defines an Urbanized Area as consisting of a central community and

adjacent densely settled areas that together have a minimum population of 50,000 persons.

Based on KQWK's coverage, the Commission stated that Hawkeye's request to change its

community of license is subject to the provision of additional information responsive to a Tuck analysis to determine whether Lolo is sufficiently independent of Missoula to merit a first local service preference, or whether it should be credited with all of the authorized aural services in the Missoula urbanized area.

Id. at para. 5.

An analysis under Tuck provides clear and convincing evidence that the proposed reallocation from Wallace to Lolo is not deserving of a first local service preference. The Commission looks at the following three factors in determining whether a community deserves a first local service preference by relying on three factors: (1) signal population coverage; (2) size and proximity of the suburban community relative to the adjacent community; and (3) the interdependence of the suburban community with the central city. See Tuck, 3 FCC Rcd 5374 (1988).

i. **Tuck Factor Number 1: Signal Coverage of KQWK over the Missoula Urbanized Area**

Hawkeye concedes in its petition that moving KQWK to Lolo, Montana will result in the station providing complete 70 dBu coverage to the Missoula Urbanized Area. Lolo is therefore not independent from Missoula.

ii. **Tuck Factor Number 2: Size and Proximity of Lolo to Missoula**

Lolo has a population of only 2,746 people according to the 1990 United States Census Bureau, in comparison to the 42,916 people that live in the city of Missoula. There is only a short distance separating Lolo from Missoula. The Commission has held that such a large difference in population size, when coupled with a close proximity between the two

communities, is a strong indication that the smaller community may be nothing more than a “mere appendage” of the Urbanized Area. See Tuck, 3 FCC Rcd 5374, at para. 62. Therefore, the second factor also points to treating the proposal as a *sub-silentio* Missoula reallocation.

**iii. Tuck Factor Number 3: Interdependence Between Lolo and Missoula**

The Commission has consistently held that the degree of interdependence between the proposed community and the centralized city in the Urbanized Area is the most important factor in a Tuck analysis. See, e.g., Farmington, California, 11 FCC Rcd 8117 (1996).

The Commission breaks down its interdependence analysis into the following characteristics:

- the extent to which community residents work in the larger metropolitan area, rather than the specified community;

Lolo is connected to Missoula by Highway 93. The most recent figures from the Montana Department of Transportation show that in 1995, 12,849 vehicles traveled Highway 93 from Lolo to Missoula on a daily basis. This large number, when compared to the disparate size in population, are a strong indication that a large majority of the people in Lolo travel to Missoula, and it is more than reasonable that a large percentage of those drivers do so for employment in Missoula.

On February 10, 1998, Sunbrook conducted a phone call survey of residents in Lolo. Sunbrook contacted 76 working adults in 50 Lolo households. Out of the 76 respondents, 61 reported they worked in Missoula, 8 were homemakers, 6 worked outside both Lolo and Missoula, and only 1 worked in Lolo. Based on this survey, less than 1 percent of the people in Lolo actually work in Lolo. Therefore, there is a strong presumption that Lolo is a mere

extension of Missoula, and that Lolo depends greatly on Missoula for economic and employment support.

- whether the smaller community has its own newspaper or other media that covers the community's local needs and interests;

Lolo has no newspaper or other media that specifically serve its community. Instead, Lolo relies on the Missoulan and the television or radio stations serving the Missoula market to provide it ample coverage of local items of interest.

- whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area;

Except for one named person, Hawkeye fails to show that any community leaders or a substantial number of residents view Lolo as distinct or separate from Missoula.

- whether the specified community has its own local government and elected officials;

Lolo has no local government or elected officials.

- whether the smaller community has its own telephone book provided by the local telephone company or zip code;

Lolo does have its own zip code, but it does not have its own telephone book provided by the local telephone company. The residential and commercial numbers are simply intermixed with the Missoula numbers in the Missoula telephone directory.

- whether the community has its own commercial establishments, health facilities, and transportation systems;

Hawkeye claims that Lolo is served by a number of commercial establishments, stating that a number of businesses use the name Lolo in their titles. This is misleading, however, because Lolo is not only the name of the community, but is used to describe an area known as Lolo Pass that is located outside the Lolo incorporated limits. Therefore, certain of the



businesses that Hawkeye claims are in Lolo, including Lolo Hot Springs and Lolo Hot Springs Mountain Lodge, are actually located well outside Lolo.

The telephone directory lists a Family Practice Clinic in Lolo. This is deceiving, however, as the clinic is actually just a satellite of the Western Montana Clinic in Missoula. Two doctors and one nurse practitioner from outside Lolo visit the clinic once a week. The only other health clinic, a dental facility, is served by just one dentist.

There are no public transportation systems that serve Lolo.

- the extent to which the specified community and the central city are part of the same advertising market;

Because of the proximity of the two communities, the advertising market in Missoula wholly encompasses Lolo, and there is no distinction used by local businesses and media when advertising in Lolo and/or Missoula.

- the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

Lolo does not have its own police department, rescue squad, water or sewer departments, and instead relies on Missoula for these municipal services. While there is a rural fire department in Lolo, it is comprised primarily of paid and volunteer firefighters that are shared between Lolo, Missoula and Florence (a community located south of Lolo).

The elementary and middle school in Lolo are part of the Missoula School District, and account for only 3% of the local county tax base. The majority of the students in Lolo attend high school in Missoula at the Missoula Big Sky High School.

When these criteria are collectively analyzed, there is an overwhelming degree of dependence by Lolo on Missoula for economic and municipal support, and as a result Lolo is

amply served by the media and information sources in and around Missoula for coverage of pertinent local events. There is no basis to reallocate KQWK to Lolo as that community's first preference, as it should be credited with all the broadcast stations serving the Missoula Urbanized Area.

d. **Fourth Allotment Priority: The Public Interest would not be Served by the Relocation of KQWK**

Wallace, Idaho is an underserved broadcast market in comparison to the ample coverage provided to Lolo by stations in the Missoula market. Hawkeye waited only three months from the date of the grant of the permit for the Channel 248C2 allotment until it requested a move of the station to Lolo. If Hawkeye wanted to locate a station in Lolo, it should have initially requested it, instead of making an inefficient use of the Commission's resources by attempting to sneak KQWK into the Missoula market. Keeping KQWK allotted to Wallace will provide many people with their first FM local service, fulfilling the Commission's most important allotment goal -- an equitable distribution of service to all parts of the country.

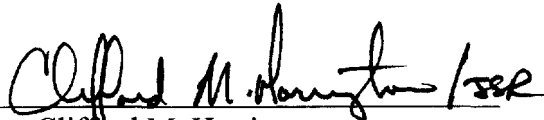
The abundance of local coverage in Lolo as a result of its proximity to Missoula means that KQWK would be providing no service benefit to the Lolo community that does not already exist. Because of this disparity, Hawkeye fails to provide any reason as to why the reallocation of KQWK from Wallace to Lolo would serve the public interest. In fact, the reverse is the case. Moving KQWK from Wallace, Idaho to Lolo, Montana will deprive an important region of its first FM broadcast service, and the public would be ill-served by granting this request. Therefore, Hawkeye's Petition must be denied.

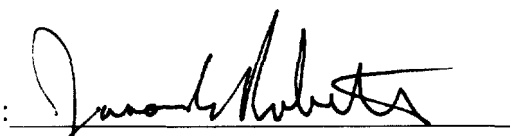
**CONCLUSION**

For the foregoing reasons, Sunbrook Communications Inc. respectfully requests the Commission dismiss or deny the petition filed by Hawkeye Radio Properties to modify the channel of operation of KQWK to specify Channel 248C3 and to reallocate KQWK from Wallace, Idaho to Lolo, Montana.

Respectfully submitted,

**SUNBROOK COMMUNICATIONS INC.**

By:   
Clifford M. Harrington

By:   
Jason S. Roberts  
Its Attorneys


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Dated: March 10, 1998

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**CERTIFICATE OF SERVICE**

I hereby certify that I have , this 10th day of March, 1998, caused to be sent by first-class U.S. Mail, postage-prepaid, a copy of the foregoing Comments to the Petition for Rulemaking to the following:

  
Rodenatha B. Harper

Dale A. Ganske  
President  
Hawkeye Radio Properties  
5546-3 Century Avenue  
Middleton, WI 53562

**SUNBROOK COMMUNICATIONS INC.**

**EXHIBIT 1**

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**EXHIBIT E-1**  
**FM "WHITE AREA" CREATED BY MOVE**  
**OF KQWK, WALLACE, ID., ALLOCATION**  
**NARRATIVE**

Hawkeye Radio Properties, Inc. holds a current construction permit (file: BPH960809MA) for KQWK, Wallace, Idaho, for a Class C2 50kw station on Channel 248 (97.5mhz). The 60dBu f(50,50) (1mv/m) primary contour of the CP is plotted in **Exhibit E-2**, along with the contours of other stations that provide primary coverage to portions of the area. The commission has received a Proposed Rulemaking (RM9132) that proposes to delete Channel 248C2 from Wallace Idaho, and add Channel 248C3 to Lolo, Montana, nearly 152km to the southeast. This would result in a 60dBu contour completely and wholly removed from the Wallace, Idaho area. As shown is **Exhibit E-2**, a half-moon shaped FM "white area" would be created east of Wallace. This area would have primary FM service if KQWK stays in Wallace, but would lose all primary FM service from any licensed station if the PRM is approved. This area spans 573 square kilometers, with portions in Idaho and Montana. A Dataworld population count (1990 census) conducted by this firm shows 109 permanent residents within this FM white area.

**KDRK-FM, Spokane, WA  
KNFR, Opportunity, WA  
KMBI-FM, Spokane, WA  
60dbu f(50,50)**

**KHTQ, Hayden, ID  
60dBu f(50,50)**

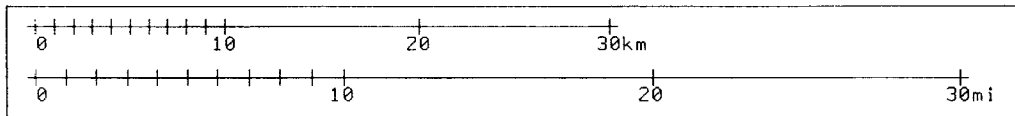
**KQWK (FM),  
Wallace, ID (CP)  
60dBu f(50,50)**

KQWK WALLACE ID CP  
FM "White Area"  
--created by PRM to  
move allocation to  
Lolo Mt.--  
February 10, 1998

**EXHIBIT E-2**  
**FM "WHITE AREA" CREATED BY MOVE**  
**OF KQWK, WALLACE, ID., ALLOCATION**  
**-- PLOT --**

KQWK SITE 47:28:27N  
115:54:49W

**FM "WHITE AREA"  
IF PRM to move KQWK  
to Lolo MT is approved.**



Scale 1: 400000.

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